

Psychology in Trial

The future advances in trial strategy and tactics will be in the greater sensitivity to and use of psychology in trial. Our objective is to influence human behavior-that of jurors, witnesses, judges, etc. Once the mechanical procedures such as the rules of evidence are mastered, the contest is in salesmanship-the skillful selling of the case with persuasive psychology and a "people-oriented" approach. Listed below are some factors important to having credibility and therefore influence in the courtroom. Also discussed is being sensitive to the emotional factors so important to our success.

I. Plan the Psychology of the Trial

A. A plan for the psychology of the case is at least as important as the plan for the rest of the case.

1. What feelings are there which are harmful and how can they be best dealt with?
2. What favorable feelings do you wish to convey?
3. Knowing what feelings you wish to convey, you must then have those feelings. You cannot fool the jury.

II. Credibility

A. Credibility with the jury gives the attorney influence and will cause the jury to look to that attorney for guidance. Many factors increase credibility.

1. Have sincerity, authenticity, integrity and the other qualities appreciated by a jury.
2. Do that which will cause the jury to like you.
3. Establish rapport with the court personnel. When the jury sees that you are highly regarded by court personnel who know you, it helps to establish jury belief in your integrity.

4. Be helpful. Help the D.A. find a lost exhibit. Help move the podium or help to solve any other problem which comes up. This, too, helps the jury believe in your integrity.
5. Treat the judge with great respect and deference, unless you believe that the judge will be so bad as to create sympathy for you. The jury generally regards him as a superior being.
6. Treat most D.A. witnesses before they testify with great courtesy. They will often help you all they can and may make a good disposition possible or may unconsciously tone down their testimony or tell you things helpful to the defense which you may not otherwise know.
7. Don't get into low level exchanges with the District Attorney. Do treat him with respect but call him "the prosecutor".
8. Do not "discount" (in any way downgrade or show that you don't consider important) anyone, but especially jurors or others whose favor you need.
9. Know the Law.
10. Feel that you are "in charge."

III. Indirect and Nonverbal Communication (What We Convey to the Jury by our Actions)

- A. A great deal of communication in the courtroom is indirect and nonverbal but may have considerable effect.
- B. Everything you do should communicate that you are defending an innocent man and that you and your case have integrity.
- C. Babysit the defendant. Get water for him. Talk to the defendant when jury can see you doing so during recesses. Pat him on the back. Call him "Joe." Humanize him and show the jury that you think the defendant is

important.

- D. Have intensity.
- E. Know what you are doing. Even if unsure, act as though you know what you are doing.
- F. Maintain posture that tells jury you're defending an innocent man.
- G. Keep cool. When emerging facts appear damaging sit quietly in relaxed position. Fidgeting tells the jury you're being hurt.

IV. Reading a Juror or Witness

- A. Don't operate mechanically.
- B. Books on nonverbal communication are useful but most important is to increase awareness of and sensitivity to the juror or witness, using what we already know about people.
- C. Reading the juror or witness will give us clues that he is lying, uncertain, weak, overcompensating, hostile, prejudiced, or any of many other things that the person would just as soon we not know.

V. Impact (How to make your Facts Carry More Weight)

- A. Remember that you cannot emphasize everything.
- B. The purpose of the Trial Plan developed in your preparation is to limit what you are trying to put across so that what you attempt can have maximum emphasis.
- C. Plan to control the "atmosphere of the case."
- D. Do nothing without purpose.
- E. Think of trial as being like "show business."

F. Ordinarily save the best for last but utilize emphasis.

G. Argue from premises acceptable to the jury.

1. An argument is not good because *you* think it is good or even if it is logical; but is good only if it is persuasive to the jury.

H. Get as much support for your position as possible from the judge and the law.

1. You are for the defendant and, therefore, biased; so, say it's not just you who says this, but that the law says it.
2. Use instructions to back your position.

I. Have proper blend of emotional and factual approaches.

1. Touching the emotional chords helps greatly with acceptability of your factual case.

J. Utilize fear of convicting an innocent man as your ultimate appeal. '